IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLN.NO.2644 OF 2006

Shri.Vijay Kashinath Kakade ..Applicant/
Appellant

Vs.

Sameer @ Santosh Shivram
Kshotri & Anr. ..Respondents

...

Mr.Vilas Tapkir with Ms.Aparna More counsel for Applicant
Mr.S.R.Shinde A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : FEBRUARY 20, 2007

P.C.

1. Heard Mr.Vilas Tapkir, the learned counsel for the applicant and Mr.S.R.Shinde, the learned A.P.P. for the State.

2. The applicant-original complainant has sought leave to file appeal against the judgment and order of acquittal dated 11.5.2006 passed by the learned Judicial Magistrate F.C. Court No.3, Pune in S.C.C.No. 601 of 2003. By the said judgment and order, the learned Sessions Judge acquitted the Respondent no.1-accused under Section 138 of Negotiable Instruments Act.

3. Perused the judgment and order and the papers

relating to the present case. It is the case of the complainant that Respondent no.1 issued cheque to him of Rs.1,00,000/-. The said cheque was not honoured. Hence, after following due procedure, he filed complaint against Respondent no.1 under Section 138 of Negotiable Instruments Act. It is the case of the complainant that he is a painting contractor doing his business in the name and style as "Reshma Decorators". The accused is engaged in the work of painting in the name and style as "Aakar". Both the complainant and the accused are sole proprietors of their business. The respondent no.1 handed over painting work of Fosico Co. to the complainant and in furtherance of the said transaction, claim of Rs.1,00,000/- was raised and accused issued cheque (Exhibit-25) for Rs.1,00,000/- dated 9.8.2002 in discharge of his liability.

4. To rebut all the contentions of the complainant, the accused has examined himself on oath and adduced evidence of two witnesses i.e. D.W.2 Nikhil Shah and D.W.3 Philips Rosiaco. In addition to this, the defence has relied upon the admission given by the complainant in his

cross-examination that he was paid an amount of Rs.1,00,000/- in cash by Shri.Nikhil Shah as advance for the said painting job which was lateron reimbursed to Shri.Nikhil Shah by the accused. The accused had also paid an amount of Rs.25,000/- by cheque bearing No.405192, an amount of Rs.1,25,000/- by cheque bearing No.305198 and an amount of Rs.30,000/- in cash. As the complainant was facing problems with his suppliers, the accused issued him a blank cheque i.e. cheque in question (Exhibit-25).

5. Under the Negotiable Instruments Act, the cheque in dispute must be issued towards the discharge of liability. In the present case, there is no evidence on record to show what sort of liability is attributed by the complainant to the accused. The complainant has nowhere brought on record or discharged the burden and proved that the cheque in question was issued in respect of some liability. In support of the contention that there was a liability, no documents have been brought on record by the complainant. It is nowhere established by the complainant that dues were outstanding against the accused. In fact, the

complainant has stated in his evidence that the painting contract was for an amount of Rs.3,81,495/-. However, in his evidence on affidavit shows that an amount of Rs.1,00,000/- was infact due to the accused. The complainant in his evidence on affidavit has stated the painting work order was for Rs.2,80,000/-, in such case, how the said amount came to be enhanced to Rs.3,81,000/- has not been shown by the complainant. There is no documentary evidence in relation to this fact. On the other hand, the respondent/accused has brought on record through D.W.2 Nikhil Shah that in fact Rs.1,00,000/- was paid by the said witness to the complainant as advance for painting job, the accused has later on reimbursed the said amount to Nikhil Shah.

6. Moreover, in the present case, the complainant has failed to prove that the notice issued by the complainant was infact received by the accused.

7. Looking to the evidence on record, the learned Magistrate has observed that there was no existing or enforceable liability for the amount of Rs.1,00,000/- against the respondent-accused under

the disputed cheque and hence, he acquitted the accused. Looking to the evidence on record, the view taken by the learned Magistrate appears to be a reasonable and possible view.

8. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view, hence, no interference is called for.

9. In this view of the matter, application for leave to appeal is rejected.

[V.K.Tahilramani, J.]